

§ 405.970 has a right to a hearing before an ALJ if—

(1) The party files a written request with the QIC to escalate the appeal to the ALJ level after the period described in § 405.970(a) and (b) has expired and the party files the request in accordance with § 405.970(d);

(2) The QIC does not issue a final action within 5 days of receiving the request for escalation in accordance with § 405.970(e)(2); and

(3) The party has an amount remaining in controversy specified in § 405.1006.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005]

§ 405.1004 Right to ALJ review of QIC notice of dismissal.

(a) A party to a QIC's dismissal of a request for reconsideration has a right to have the dismissal reviewed by an ALJ if—

(1) The party files a written request for an ALJ review within 60 days after receipt of the notice of the QIC's dismissal.

(2) The party meets the amount in controversy requirements of § 405.1006.

(3) For purposes of this section, the date of receipt of the QIC's dismissal is presumed to be 5 days after the date of the dismissal notice, unless there is evidence to the contrary.

(4) For purposes of meeting the 60-day filing deadline, the request is considered as filed on the date it is received by the entity specified in the QIC's dismissal.

(b) If the ALJ determines that the QIC's dismissal was in error, he or she vacates the dismissal and remands the case to the QIC for a reconsideration.

(c) An ALJ's decision regarding a QIC's dismissal of a reconsideration request is final and not subject to further review.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005]

§ 405.1006 Amount in controversy required to request an ALJ hearing and judicial review.

(a) *Definitions.* For the purposes of aggregating claims to meet the amount in controversy requirement for an ALJ hearing or judicial review:

(1) “Common issues of law and fact” means the claims sought to be aggregated are denied, or payment is reduced, for similar reasons and arise from a similar fact pattern material to the reason the claims are denied or payment is reduced.

(2) “Delivery of similar or related services” means like or coordinated services or items provided to one or more beneficiaries.

(b) *ALJ review.* To be entitled to a hearing before an ALJ, the party must meet the amount in controversy requirements of this section.

(1) For ALJ hearing requests, the required amount remaining in controversy must be \$100 increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) as measured from July 2003 to the July preceding the current year involved.

(2) If the figure in paragraph (b)(1) of this section is not a multiple of \$10, then it is rounded to the nearest multiple of \$10. The Secretary will publish changes to the amount in controversy requirement in the FEDERAL REGISTER when necessary.

(c) *Judicial review.* To be entitled to judicial review, a party must meet the amount in controversy requirements of this subpart at the time it requests judicial review.

(1) For review requests, the required amount remaining in controversy must be \$1,000 or more, adjusted as specified in paragraphs (b)(1) and (b)(2) of this section.

(2) [Reserved]

(d) *Calculating the amount remaining in controversy.* (1) The amount remaining in controversy is computed as the actual amount charged the individual for the items and services in question, reduced by—

(i) Any Medicare payments already made or awarded for the items or services; and

(ii) Any deductible and coinsurance amounts applicable in the particular case.

(2) Notwithstanding paragraph (d)(1) of this section, when payment is made for items or services under section 1879 of the Act or § 411.400 of this chapter, or the liability of the beneficiary for

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those services is limited under § 411.402 of this chapter, the amount in controversy is computed as the amount that the beneficiary would have been charged for the items or services in question if those expenses were not paid under § 411.400 of this chapter or if that liability was not limited under § 411.402 of this chapter, reduced by any deductible and coinsurance amounts applicable in the particular case.

(e) *Aggregating claims to meet the amount in controversy—*

(1) *Appealing QIC reconsiderations to the ALJ level.* Either an individual appellant or multiple appellants may aggregate two or more claims to meet the amount in controversy for an ALJ hearing if—

(i) The claims were previously reconsidered by a QIC;

(ii) The request for ALJ hearing lists all of the claims to be aggregated and is filed within 60 days after receipt of all of the reconsiderations being appealed; and

(iii) The ALJ determines that the claims that a single appellant seeks to aggregate involve the delivery of similar or related services, or the claims that multiple appellants seek to aggregate involve common issues of law and fact. Part A and Part B claims may be combined to meet the amount in controversy requirements.

(2) *Aggregating claims that are escalated from the QIC level to the ALJ level.* Either an individual appellant or multiple appellants may aggregate two or more claims to meet the amount in controversy for an ALJ hearing if—

(i) The claims were pending before the QIC in conjunction with the same request for reconsideration;

(ii) The appellant(s) requests aggregation of the claims to the ALJ level in the same request for escalation; and

(iii) The ALJ determines that the claims that a single appellant seeks to aggregate involve the delivery of similar or related services, or the claims that multiple appellants seek to aggregate involve common issues of law and fact. Part A and Part B claims may be combined to meet the amount in controversy requirements.

(f) *Content of request for aggregation.* When an appellant(s) seeks to aggregate

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claims in a request for an ALJ hearing, the appellant(s) must—

(1) Specify all of the claims the appellant(s) seeks to aggregate; and

(2) State why the appellant(s) believes that the claims involve common issues of law and fact or delivery of similar or related services.

§ 405.1008 Parties to an ALJ hearing.

(a) *Who may request a hearing.* Any party to the QIC's reconsideration may request a hearing before an ALJ. However, only the appellant (that is, the party that filed and maintained the request for reconsideration by a QIC) may request that the appeal be escalated to the ALJ level if the QIC does not complete its action within the time frame described in § 405.970.

(b) *Who are parties to the ALJ hearing.* The party who filed the request for hearing and all other parties to the reconsideration are parties to the ALJ hearing. In addition, a representative of CMS or its contractor may be a party under the circumstances described in § 405.1012.

§ 405.1010 When CMS or its contractors may participate in an ALJ hearing.

(a) An ALJ may request, but may not require, CMS and/or one or more of its contractors, to participate in any proceedings before the ALJ, including the oral hearing, if any. CMS and/or one or more of its contractors, including a QIC, may also elect to participate in the hearing process.

(b) If CMS or one or more of its contractors elects to participate, it advises the ALJ, the appellant, and all other parties identified in the notice of hearing of its intent to participate no later than 10 days after receiving the notice of hearing.

(c) Participation may include filing position papers or providing testimony to clarify factual or policy issues in a case, but it does not include calling witnesses or cross-examining the witnesses of a party to the hearing.

(d) When CMS or its contractor participates in an ALJ hearing, the agency or its contractor may not be called as a witness during the hearing.